for The Defense

Volume 5, Issue 12 ~ ~ December 1995

The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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Preserving Trial Court Error For Appellate Review

By Paul J. Prato, Supervisor--Appeals Division

The appellate lawyer in a criminal case is faced with an almost insurmountable hurdle if the trial lawyer has failed to make a timely or sufficient challenge to any error in the trial court proceedings. The argument by the state that the failure to bring an error to the attention of the trial judge, in a sufficient and timely manner, waived the issue for appeal is likely to be embraced by the appellate court.

The trial lawyer should keep in mind that the appellate court presumes that the trial court acted properly.[1] The appellate court will affirm a trial judge's ruling even if the judge's reasoning is wrong so long as the ruling is right for any reason.[2] This presumption in favor of upholding the decisions of the trial judge causes appellate court judges to be receptive to arguments of waiver and harmless error.

The trial lawyer must remain forever conscious of the fact that the creation of the record on appeal is his or her responsibility. The state and the trial judge know that any error for which a legally sufficient record is not made is unlikely to form the basis for a reversal. You as the trial lawyer must remember this fact of appellate life throughout the proceedings in the trial court. Whether the record on appeal is complete or incomplete depends upon knowledge and effort of the trial lawyer.

The Record

Appellate review of proceedings in the trial court is limited to the record on appeal. The record on appeal consists of "[a] certified copy of the transcript, all documents, papers, books and photographs introduced into evidence, and all pleadings and documents in the file . . . "[3] A substantial part of the appellate review process centers around the court reporter's transcript of the proceedings in the trial court. If a proceeding is not recorded by a court reporter, what is said at that proceeding is not part of the record on appeal. Anything said among the parties and the judge which is not recorded by the court reporter simply vanishes into the ether as soon as the words are spoken.

The most common proceedings which are not reported are trial bench conferences and in-chambers proceedings to settle the instructions. Many judges encourage you to have an informal conference without a court reporter with the argument that you can make your record later. This is simply not a good procedure. In the heat of battle you may forget what you said during the

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informal bench or in-chambers conference. Making an after-the-fact record is never a good substitute for a contemporaneous record. Even worse, you may forget entirely to make a record at all.

A safe rule is to never agree to off-the-record bench conferences or to off-the-record conferences in chambers. A pretrial motion requesting the presence of the court reporter at all bench conferences and at all conferences in the judge's chambers will put the state and the court on notice that you want everything on-the-record.[4] The motion will also provide a written record if the judge refuses a request that the court reporter be present at a bench conference or in-chambers conference. If you are tempted to go along with off-the-record proceedings, remember that any error that occurs in that proceeding is not likely to form the basis for a reversal.

Avoiding Waiver of Error

The case law is very clear that, absent fundamental error, raising an issue for the first time on appeal will result in waiver of the issue for appeal.[5] Waiver usually occurs when the trial lawyer fails to give the trial judge a timely opportunity to correct an error of either omission or commission. Waiver can be avoided by the simple procedure of bringing the error to the attention of the trial court in a timely manner so that the trial judge has an opportunity to correct the error.

The method for making the record relative to erroneous evidentiary rulings is clearly set forth in Rule 103, Arizona Rules of Evidence. Rule 103 reads:

> **(a) Effect of erroneous ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
>
> (1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
>
> (2) *Offer of Proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

It is a good practice to review this rule prior to the beginning of any evidentiary hearing or trial.

In addition to the timely and specific objections required by Rule 103(a)(1), it is also necessary that the objection is based upon the correct theory. Objection to the admission of evidence on one ground will not preserve issues relating to admission of that evidence on other grounds.[6] The appellate lawyer will not be able to successfully argue a theory different from that presented to the trial judge. This rule of appellate review is in keeping with the policy of giving the trial judge the first opportunity to correct the error.

A Rule 103(a)(2) offer of proof is necessary if evidence that you seek to admit is precluded by the trial judge. The offer may be made by stating on the record specifically what the proposed testimony by the witness would be or the precluded information can be elicited from the witness by questions, on the record, outside the presence of the jury.

Timely and specific objections are also required for non-evidentiary errors. Absent fundamental error, the failure to object or properly object has resulted in waiver of indictment error;[7] jury instruction error;[8] jury selection error;[9] prosecutorial misconduct error;[10] and judicial misconduct error.[11] Most types of non-evidentiary error can be waived by the failure to make a specific and timely objection on the record.

Even certain constitutional error is subject to waiver absent a timely and specific objection on the record. Constitutional error is not reversible if it is harmless beyond a reasonable doubt.[12] Trial counsel should keep in mind when making a constitutional objection to base the objection not only upon the United States Constitution but also the Arizona Constitution.[13]

Waiver of appellate review can also occur if the error is invited. The rule is that a defendant who invites

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error in the trial court cannot assign that same error on appeal.[14] An attorney who opens up a whole field of inquiry cannot assign its fruits as error on appeal.[15] Examples of invited error are requesting an improper instruction,[16] failing to request a cautionary or special instruction,[17] and opening up an otherwise inadmissable area of inquiry during cross-examination.[18]

Avoiding waiver of issues requires that the trial lawyer be thoroughly prepared as to the facts of the case and the applicable law. Knowing the facts and the applicable law will make you much more alert to errors that occur. And when those errors do occur you will be prepared to speak up and make the record.

The Doctrine of Fundamental Error

If the trial lawyer has failed to preserve an issue either because of the failure to properly place an objection on the record or because of invited error, the appellate attorney must turn to the doctrine of fundamental error. The doctrine of fundamental error is recognized in the rules of evidence.[19] The appellate courts are required to search the record on appeal for its existence.[20] Yet fundamental error is rarely determined to have occurred.

An attorney who opens up a whole field of inquiry cannot assign its fruits as error on appeal.

Perhaps the most often cited case discussing and explaining this doctrine is *State v. Gendron*.[21] The rationale for the waiver rule and the doctrine of fundamental error safety net is explained in *Gendron* as follows:

> Our adversarial system properly and necessarily precludes injection of new issues on appeal. The reason for this well-recognized rule is simplicity itself-- without the rule, the system won't work. In **extremely limited circumstances**, we recognize that some issues may be so important that overriding considerations concerning the integrity of the system will excuse a party's failure to raise the issue in the trial court. [Emphasis added.][22]

Application of the doctrine of fundamental error requires that the error be "clear, egregious, and curable only via a new trial."[23] To come within these parameters, the error must be such that the defendant could not possibly have had a fair trial because the error goes to foundation of the case or takes away from the defendant a right essential to his or her defense.[24]

Avoid placing your client and the appellate attorney in position of having to argue for reversal based upon the doctrine of fundamental error. Your client's chances of obtaining such relief are very small.

The Doctrine of Harmless Error

Assuming that you have made timely specific objections to the error occurring in the trial court, you still have not made a complete record for appeal. Even though the waiver argument has been avoided, there remains the problem created by the doctrine of harmless error.

The Constitution of Arizona provides that "[n]o cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done."[25] Error is harmless or nonprejudicial when it can be said beyond a reasonable doubt that the error did not affect the verdict.[26]

Absent a clear showing of prejudice by the record, the appellate court is likely to accept the attorney general's argument that the error is harmless. Not only must the trial lawyer make a timely and legally sufficient objection, but he or she must also articulate with as much specificity as possible why the error prejudices the defendant and the defendant's theory of defense.

The Legally Sufficient Record

The creation of a legally sufficient record for appeal begins when the preparation for trial begins. The preparation for trial begins when the trial lawyer undertakes the defense. Preparation for trial and any subsequent appeal require that the trial lawyer be thoroughly prepared as to both the facts and the law applicable to the defendant's case. If you are factually and legally prepared for trial you will recognize the potential appeal issues as they arise. Once you are able to recognize the issue, it is simply a matter of speaking up on the record.

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1. *State v. Forteso*, 8 Ariz. App. 468, 447 P.2d 560 (1968).

2. *State v. Perez*, 141 Ariz. 459, 687 P.2d 1214 (1984).

3. Rule 31.8(a)(1), Arizona Rules of Criminal Procedure.

4. *See Jones v. District Court*, 780 P.2d 526 (Colo. 1989).

5. *State v. Gendron*, 168 Ariz. 153, 154, 812 P.2d 626, 627 (1985).

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6. *State v. Hamilton*, 177 Ariz. 403, 408, 868 P.2d 986, 991 (App. 1993).

7. *State v. Herrera*, 176 Ariz. 9, 15, 859 P.2d 119, 125 (1993).

8. *Id.*

9. *State v. West*, 176 Ariz. 432, 439, 862 P.2d 192, 199 (1993).

10. *Id.* at 445, 862 P.2d at 405.

11. *State v. Everhart*, 169 Ariz. 404, 408, 819 P.2d 990, 994 (App. 1991).

12. *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824 (1967).

13. *See*, Feldman, Stanley G., & David L. Abney, "The Double Security of Federalism: Protecting Individual Liberty Under the Arizona Constitution", 20 *Ariz. State L.J.* 151 (1988).

14. *State v. Endreson*, 109 Ariz. 117, 122, 506 P.2d 248 (1973).

15. *State v. Woratzeck*, 134 Ariz. 452, 454, 657 P.2d 865, 867 (1982).

16. *State v. Taylor*, 109 Ariz 481, 483, 512 P.2d 590 (1973).

17. *State v. Islas*, 132 Ariz. 590, 591, 647 P.2d 1188, 1189 (App. 1982).

18. *State v. Arriola*, 99 Ariz. 332, 333-334, 409 P.2d 37 (1965).

19. Rule 103(d), Arizona Rules of Evidence.

20. A.R.S. § 13-4035; *State v. Powell*, 5 Ariz. App. 51, 423 P.2d 127 (1967).

21. 168 Ariz. 153, 812 P.2d 626 (1991).

22. *Id.* at 155, 812 P.2d at 628.

23. *Id.*

24. *Id.*

25. Article VI, Section 27, Constitution of Arizona.

26. *State v. Lundstrom*, 161 Ariz. 141, 150, 776 P.2d 1067, 1076 (1989). Ω

Experience Teen Court

by Frank A. Johnson, Deputy Public Defender, Juvenile Division--Durango

My recent invitation to speak at Independence High School was accompanied by the usual nervousness and emotional charge often felt in Juvenile Court hearings. Although representing juveniles on a daily basis can sharpen the communication skills of anyone out of high school at least ten years, the anticipated "talk" in front of an auditorium filled with high school students provided enough tension to stifle any outline or proposed thoughts for a speech.

The visit back to high school reminded me of a day not long ago in which I, too, became interested in the study of law. The auditorium was filled with similarly eager students, all participating in the YMCA Teen Court Program, which provides teens an opportunity to be tried for school infractions by a jury of their peers.

Participants in Teen Court include students acting in the roles of defense counsel, prosecutor, bailiff, court clerk, judge, and jury. The entire process is supervised by a sponsoring teacher, but all participants strive for three main goals:

1. To resolve current problems between students and administration;
2. To avoid future unacceptable behavior; and,
3. To learn responsibility for one's own actions through positive peer pressure.

Through the myriad of questions concerning the role and ethical responsibilities of defense counsel, the results were interestingly similar to the basic, pure interests sought daily at Juvenile Court proceedings.

Teen Court is far from duplicating our present juvenile justice system. Obviously, there are no attorneys, judges, or formality of proceedings. In addition, a student must agree to some form of disciplinary action before participating, or, in the words of Teen Court, "... the jury does not decide guilt or innocence--only the punishment that is to be assigned to the defendant."

However, what Teen Court structurally lacks, the participants more than adequately provide--an overwhelming sense of fairness. Fundamentally, all students seek fair treatment for deficient behavior, and a responsible solution to their problems. Is this concept of fairness not unlike the most raw form of Due Process found in any Juvenile Court hearing? Teen Court has motivated students to learn about their legal system and to participate in a fair and impartial manner. With juveniles placing such an importance on fairness and efficiency, the foundation of our legal system is set to strengthen well into the future. Ω

DUI Detection Guide

by Gary Kula

Editor's note: Mr. Kula is in private practice in Phoenix after serving for five years as a Deputy Public Defender at the Maricopa County Public Defender's Office. While at our office, he conducted in-house DUI training and served as the DUI Editor for this newsletter. His private practice is limited to criminal defense with an emphasis on DUI cases.

The National Highway Traffic Safety Association (NHTSA) publication "Guide for Detecting Drunk Drivers at Night" has been used for many years by police officers, courts, and defense attorneys in evaluating DUI cases. In March of 1993, NHTSA published an updated version of this guide to be used specifically in DUI-motorcycle cases. This publication, titled "The Detection of DUI Motorcyclists," includes a detection guide to be used by an officer in assessing a motorcyclist's driving behaviors and actions. For comparison purposes, the detection guides for motorcycles and automobiles are printed below along with a brief explanation taken directly from the respective NHTSA publication.

Explanation of Motorcycle DWI Detection Guide

Fourteen cues were identified that best discriminate between DWI and unimpaired operation of a motorcycle. The cues have been labeled as "Excellent Predictors" and "Good Predictors," based on study results. The excellent cues predicted impaired motorcycle operation 50 percent or more of the time. The good cues predicted impaired motorcycle operation 30 to 49 percent of the time. The special coordination and balance requirements of riding a two-wheeled vehicle provided most of the behaviors in the excellent category of cues.

The cues described have been used by law enforcement officers from across the United States to help detect impaired motorcycle operators. The cues can be used at all hours of the day and night, and they apply to all two-wheeled motor vehicles.

The cues described and illustrated in this document (and on the accompanying detection guide and training video) are the behaviors that are most likely to discriminate between impaired and normal operation of a motorcycle. However, the special case of "speeding" requires elaboration. Motorcyclists stopped for excessive speed are likely to be DWI only about 10 percent of the time (i.e., ten times out of 100 stops for speeding). But because motorcyclists tend to travel in excess of speed limits, speeding is associated with a large portion of all motorcycle DWI arrests. In other words, while only a small proportion of speeding motorcyclists are likely to be DWI, the large number of speeding motorcyclists results in a large number of DWI's, despite the relatively small probability. (*See Guide* →)

MOTORCYCLE DWI DETECTION GUIDE

NHSTA has found that the following cues predicted impaired motorcycle operation:

Excellent Cues (50% or greater probability)
- Drifting during turn or curve
- Trouble with dismount
- Trouble with balance at a stop
- Turning problems
  - (e.g., unsteady, sudden corrections; late braking; improper lean angle)
- Inattentive surroundings
- Inappropriate or unusual behavior
  - (e.g., carrying or dropping object; urinating at roadside; disorderly conduct, etc.)
- Weaving

Good Cues (30 to 50% probability)
- Erratic movements while going straight
- Operating without lights at night
- Recklessness
- Following too closely
- Running stop light or sign
- Evasion
- Wrong way

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Explanation of Automobile DWI Detection Guide

The number given after each visual cue is the probability that a driver exhibiting that cue has a BAC equal to or greater than .10. For example, the 65 for the first cue, Turning With Wide Radius, means that chances are 65 out of 100 that a driver who turns with wide radius at night will have a BAC equal to or greater than .10. The 50 for Drifting means chances are 50 out of 100 (50:50) that a driver who is drifting at night will have a BAC equal to or greater than .10.

Each value shown is based on seeing only one cue. However, multiple cues are seen more often than single cues. When two or more cues are seen, add 10 to the largest value among the cues observed.

When you want to predict from an observed cue the probability that a driver has a BAC equal to or greater than .05, add 15 to the value shown for that cue. For multiple cases, add 15 after adding 10 to the largest cue value. (*See Guide* ↓)

AUTOMOBILE DWI DETECTION GUIDE

Percentage of Motorists with BAC equal to or greater than the legal limit:

Observed Behaviors	Probabilities DWI
Turning with wide radius	65
Straddling center or lane marker	65
Appearing to be drunk	60
Almost striking object or vehicle	60
Weaving	60
Driving on other than designated roadway	55
Swerving	55
Slow speed (more than 10 mph below limit)	50
Stopping (without cause) in traffic lane	50
Following too closely	50
Drifting	50
Tires on center or lane marker	45
Braking erratically	45
Driving into opposing or crossing traffic	45
Signaling inconsistent with driving actions	40
Slow response to traffic signals	40
Stopping inappropriately (other than in lane)	35
Turning abruptly or illegally	35
Accelerating or decelerating rapidly	30
Headlights off	30

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Instructing the Jury on Disorderly Conduct

By Lawrence S. Matthew,
Deputy Public Defender--Appeals Division

Your client goes to trial on a charge of aggravated assault. During the incident forming the basis of the charge, a deadly weapon/dangerous instrument was in your client's possession--but not used. During the settling of instructions you are able to convince the judge that the evidence supports giving a lesser-included offense instruction on disorderly conduct.[1]

You search the R.A.J.I.'s[2] but are unable to find an instruction on disorderly conduct.[3] You fashion an instruction of your own lifting language directly from the statute.[4] Your instruction incorporates two of the six alternative ways in which the statute may be violated. The instruction reads as follows:

> A person commits disorderly conduct if, with the intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:
>
> 1. Engages in fighting, violent, or seriously disruptive behavior; or
>
> 2. Recklessly handles or displays a deadly weapon or dangerous instrument.

The jury is provided with three verdict forms: 1) Guilty of aggravated assault; 2) guilty of the lesser-included offense of disorderly conduct; or 3) not guilty.

To your client's benefit, the jury returns an acquittal on the aggravated assault charge. The jury, however, does convict on disorderly conduct. A small victory--or is it?

The verdict forms used here created a problem. A quick review of subsection "B" of the disorderly conduct statute reveals the nature of the problem.[5]

It used to be that no matter what an accused did to come within the scope of the disorderly conduct statute, he or she could only be convicted of a misdemeanor. As of April 19, 1994, however, this changed. It is now possible to receive a felony conviction for committing disorderly conduct.

Now, if one commits disorderly conduct by recklessly handling, displaying or discharging a deadly

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weapon or dangerous instrument, that person is guilty of a felony.[6]

Whenever you get the court to give a disorderly conduct instruction, if one of the possible bases for conviction is § 13-2904(A)(6), then the verdict forms must provide the jurors an opportunity to indicate under what theory they are returning a verdict of guilty.

In the case set out at the beginning of the article, the guilty verdict form for disorderly conduct should have read more like this:

> We, the jury, find the defendant guilty of the lesser-included offense of disorderly conduct. We find the defendant committed disorderly conduct by:
>
> ___ Engaging in fighting, violent, or seriously disruptive behavior;
>
> ___ Recklessly handling or displaying a deadly weapon or dangerous instrument.
>
> **(CHECK ONE LINE ONLY)**

. . . the verdict forms must provide the jurors an opportunity to indicate under what theory they are returning a verdict of guilty.

While the problem presented in this article may seem to be ridiculously obvious, it is unfortunately, in reality, a reoccurring scenario. At least three cases have been handled on appeal recently where this very problem existed. Many of us who have practiced for a number of years forget that the law changes on occasion. It is always wise--no matter how convinced you are that you know what the statutes say--to fully review each and every statute that applies to your client each time you begin to work on a case. You will probably be surprised at the number of times you find that a statute doesn't read exactly the way you thought it would read.

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1. *See, State v. Angle*, 149 Ariz 478, 720 P.2d 79 (1986) (disorderly conduct can be a lesser of aggravated assault).

2. Recommended Arizona Jury Instructions (Criminal).

3. There is no R.A.J.I. for the crime of disorderly conduct.

4. Arizona Revised Statutes § 13-2904(A)(1-6) provides:
A. A person commits disorderly conduct if, with the intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:
1. Engages in fighting, violent or seriously disruptive behavior; or
2. Makes unreasonable noise; or
3. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or
4. Makes any protracted commotion, utterance or display with the intent to prevent the transaction of business of a lawful meeting, gathering or procession; or
5. Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency; or
6. Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.

5. A.R.S. § 13-2904(B) provides:
Disorderly conduct under subsection A, paragraph 6 is a class 6 felony. Disorderly conduct under subsection A, paragraph 1,2,3,4, or 5 is a class 1 misdemeanor.

6. *See, id.* Ω

MCPD Training --
Doing More With Less

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Total spending for training nationally increased by 15% in non-inflation dollars since 1990. American organizations with 100 or more employees budgeted a total of $52.2 billion for formal training in 1995.

Arizona's Public Defender Training Fund (PDTF), however, actually has decreased in overall dollars because of a reformulation by the legislature of the fund's allocation. Our office maintains its quality training program despite the reductions with the assistance of dedicated volunteers who faithfully (and regularly) offer their expertise.

Thank you, to these support and attorney staff members-- guardians of the Sixth Amendment!

Drug Court

by Nora Greer, Deputy Public Defender

One day at a sentencing the judge announces that your client has a special term on his probation that he must participate in Drug Court. What exactly is Drug Court? Drug Court is a special program of the Adult Probation Department for first-time drug offenders who have never been through any type of drug treatment. The Adult Probation Department operates the program with the assistance of the Court, County Attorney, and Public Defender. I am the deputy public defender assigned to Drug Court before Judge Susan Bolton with Adult Probation Officers Julie Begonia and Nancy O'Brian, and Deputy County Attorney Abby Kennedy.

Drug Court can be like going to a revival meeting.

Should you get your client into Drug Court? Yes! Drug Court can benefit your client because the person can get off his probation in seven months and receive low-cost drug treatment. Participants must pay for the cost of treatment, which amounts to a $20.00 initiation fee and a $16.00/week fee. If a client is indigent, the counselors and he will determine a weekly fee that can be paid.

Who is eligible for Drug Court? A Drug Court client is someone who has been sentenced to a possession or paraphernalia charge with no prior drug convictions and no more than one prior felony conviction. He must be probation eligible and have no prior experience of drug treatment. TASC flunk-outs are accepted. If your client has a serious addiction problem, Drug Court is not right for him--this includes people with a history of intravenous drug use. The client should be sentenced to three years on probation with 60 days of deferred jail. The client cannot be mentally ill or of such a low intelligence that he cannot participate in the program. However, you can be illiterate and be in Drug Court. Illiterate clients will be required to go to literacy class.

How is Drug Court structured? Drug Court works on a contract system. The client enters a contract with the court. The contract lists specific things the client must do in the next phase, four to eight weeks long. For example, in phase one, a client must attend a process group and a drug education/AIDS education class once a week, go to two 12-step meetings a week, and pay his fees. All clients must test at TASC on the Colors Program.

Drug testing is a major component of Drug Court. It is the only method available for determining if someone has abstained from use of drugs. A dirty urinalysis (UA) does not cause an automatic termination. Clients with dirty UAs first must attend relapse groups (a special group for people who have relapsed) and do more 12 steps. The client may have to repeat his path or start again in an earlier path. Missed or diluted UAs are considered dirty and receive the same treatment.

In addition to this, the client must find a 12-step sponsor and have weekly contact with him. He must contact the probation officer once a week and work on community service hours.

People receive points for everything they do. If they are doing most of these things, they should do well in the program. They are expected to do everything.

If a client gets enough points, he goes on to the next phase. He can even have the length of his probation or jail time reduced. If the client falls short, several things can happen. The person may stay in his path until he finishes or start over. He may be demoted to an earlier path. If he has done very little or has a dirty UA, Judge Bolton may order that he serve part of the 60-day jail sentence. The person is usually taken into custody at court. Jail has also been ordered for persistent failures to test, tampering with a test, and a dirty test after a while in the program.

Persistent dirty UAs can be a sign of a major substance abuse problem. If a client needs residential treatment, the court will order that he get on a waiting list. The Probation Office will provide referrals. If a person enters residential treatment, he will usually be discharged and transferred to standard probation.

Right now there are five parts in the program, pretreatment, Path One, Path Two, Path Three, and Aftercare. Almost everyone goes through the first four. Aftercare is for those who want it and those who are finishing their community service or owe large sums of money. If a client does everything, he can graduate from the program in seven months. Many people graduate in less than a year. Obviously that is a much better option than spending three years on standard probation.

Is Drug Court successful? Some preliminary studies say "yes." These studies indicate a lower recidivism rate for drug offenses for people who have gone through Drug Court as opposed to those staying on probation. The clients like it. There are clients who abstain from drug use long enough to graduate and resume later. However, there are also clients who get

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into the 12-step way of life and make positive changes. Drug Court can be like going to a revival meeting. Graduates get a certificate and everyone applauds. If you have the opportunity to get your client into Drug Court, do it. The lawyer's input comes at the conferences that are held before court on Friday morning. Drug Court referrals are now being done directly out of both East One and South Phoenix Justice Courts. If you ever have any questions about this, please feel free to contact me. Ω

Arizona Advance Reports
Volume 201

State v. Walden, 201 Ariz. Adv. Rep. 3
Trial Judge James C. Carruth
Affirmed

This case is an automatic appeal after the death penalty was imposed upon Walden following his conviction for first-degree murder, four counts of sexual assault, two counts of sexual abuse, two counts of dangerous kidnapping, one count of kidnapping, one count of dangerous burglary, one count of burglary, and one count of robbery. Many issues are dealt with swiftly and without much discussion as to the merits of Walden's arguments.

Three victims were forcibly raped. Walden had gained access by posing as a maintenance man of different apartment complexes where his uniform for Arizona Chemical Company made a believable disguise. The third rape victim was ultimately killed; the first and second rape victims survived their attacks and were able to identify Walden as their attacker.

Severance

Walden wanted the three cases severed, arguing at trial that under Rule 13.4(b), Ariz. Rule Crim. Proc., he was entitled to severance as a matter of right. The state argued that joinder and severance was proper under Rule 13.3(a)(3) based on a common scheme or plan of Walden.

The court stated that in order to have a common scheme there must be a "visual connection" between the crimes (i.e., similarities must exist where one could normally expect to find differences). The court went on to list no less than ten similarities among the three crimes, thereby finding no abuse of discretion by the trial court in denying Walden's motion to sever.

In-Court Identification

Walden argued that the photo line-up shown to the two victims was impermissibly suggestive because: (1) two of the six suspects shown had blue eyes (when one of the victims thought her attacker's eyes were brown); (2) one suspect shown had a "ruddy" complexion and one was Hispanic looking (when one victim said that her attacker's skin was fair); (3) after the victims identified Walden, the victims were told that Walden was in custody; and (4) after identification, the victims were shown a news article of Walden's arrest.

The court stated that the law requires that photo line-ups depict individuals who resemble one another so that the suspect does not stand out. The court found that all suspects did resemble one another in general. Furthermore, the court found that telling the victims about Walden's in-custody status and showing the news article after identification was made did not taint the ID that was not suggestive in the first place.

Another witness at the apartment complex where the third victim was murdered initially identified Walden from a photo line-up as being someone she had seen at the complex that day. At a live line-up, that same witness identified someone else. The officer conducting the line-up stopped the procedure and turned off the audio tape. When the tape was turned back on, the witness was able to identify Walden.

Despite the apparent impropriety that occurred while the tape was turned off, the court found that the state had met its burden of proving by clear and convincing evidence that the pre-trial ID procedures were not unduly suggestive.

At the *Dessureault* hearing, it was established that the witness had made a statement that #2 in the line-up looked very similar but was not the man she saw. Believing the interview to be over, the officer shut off the tape. When the witness continued looking and said that although some looked similar, she'd definitely seen #5 (Walden) acting strangely at the apartments. The officer immediately turned on the tape again, explained on the tape what had just occurred, and the witness confirmed it. Walden offered nothing to rebut the testimony and the court was satisfied that the procedure was not unduly suggestive.

Failure to Preserve
Potentially Exculpatory Evidence

Walden moved to dismiss several counts because a sexual assault kit for one of the victims did not contain a vaginal swab. Walden conceded that the state did not act in bad faith, and the court held that trial court did not err in not dismissing the counts. Furthermore, the court refused to redefine "bad faith" to include losing or misplacing evidence.

(cont. on pg. 10)☞

Voir Dire

•Refusal to Ask Proposed Questions.

Walden argued that his constitutional rights were violated when the trial judge refused to submit his questions to potential jurors. Rule 18.5, Ariz. Rules Crim. Proc., states that a judge shall ask all "appropriate questions requested by counsel." The scope and extent of the voir dire examination is in the sole discretion of the court. The appeals court applied a standard which would not allow disturbance of the trial court's selection absent a showing that a fair and impartial jury was not chosen (i.e., the trial court's failure to ask Walden's questions rendered his trial fundamentally unfair).

The court found that the issues addressed in Walden's proposed questions were adequately covered by the trial judge and that when the voir dire is viewed in its entirety, the trial court did not abuse its discretion in disallowing Walden's questions.

•Failure to Strike for Cause.

A potential juror had stated that she had formed an opinion about the case but that her opinion could be changed. That court asked certain follow-up questions to determine if the juror could presume Walden innocent and if the juror could render a fair and impartial verdict based upon the evidence only. The court was satisfied with her affirmative responses and did not strike the juror for cause.

Walden argued that under *State v. Huerta*, 175 Ariz. 262, reversal is required if the court abuses it discretion by failing to strike a juror for cause and defendant is forced to use a peremptory strike to remove the juror. The court found that the trial court did not abuse its discretion because, unlike the *Huerta* juror who, after follow-up questioning, did not feel he could be fair and thought the defendant was guilty, this juror, though she had formed an opinion, could set aside that opinion and judge Walden solely on the evidence presented.

•Striking for Cause.

Walden claims that the trial court committed reversible error by striking several jurors for vacation plans, claiming that the judge used this as a ploy to create a jury favorable to the state.

The court did not spend much time in holding that Walden was entitled to a fair and impartial jury but not a particular jury.

•"Death Qualifying" the Jury.

Walden's argument that the trial court erred by questioning jurors on their views on the death penalty and their ability to follow instructions in light of those views was answered with, "we have held to the contrary" followed by several case citations.

Admission of Walden's Statements

•Illegal Arrest.

Walden argued that his statements should be suppressed as they were tainted by a warrantless arrest even though Walden was arrested outside his home because police had tricked or coerced him into coming outside. The court found the police act of asking Walden to step outside not to be coercive.

•Insufficient *Miranda* Warnings.

Walden next argued that he did not voluntarily waive his Miranda rights with respect to Murder because the police told him the questions were to be about sexual assault. Therefore, Walden concluded, the waiver was invalid due to trickery. The United States Supreme Court has held in *Colorado v. Spring*, 479 U.S. 564, that a suspect's awareness of all possible areas of interrogation is not relevant to determining whether a waiver was intelligent or voluntary.

Gruesome Photographs

Although Walden agreed to stipulate to the manner and cause of death of the third victim, the trial court allowed 19 photos depicting the victim's body and the crime scene into evidence. Walden argued that the photos were too prejudicial and not probative, and therefore their admission was an abuse of the trial court's discretion.

The court held that the photos' prejudicial effect did not outweigh their probative value. The photos were found to help illustrate the crime scene, the sequence of events (premeditation), and the medical testimony regarding cause of death. The trial court's decision was left undisturbed as no abuse of discretion was found.

911 Tapes

Walden argued that the tapes were hearsay. The court held, however, that since Walden himself attacked supposed inconsistencies in one of the victims' descriptions of her attacker, the tapes were not beyond the scope of cross-examination. Furthermore, they were not inadmissible hearsay because they were not offered to prove the description but to show the victim's emotional state that day which would go toward explaining her inconsistent description.

Next Walden argued admission of the 911 call regarding the third victim was improper, citing two additional grounds for inadmissibility which were not preserved at trial by objection. The court, therefore, did not address the issue.

Attacks Committed While Walden In Custody

Walden argued that he was unable to put on a complete defense because the trial court did not allow evidence of other sexual assaults that occurred while Walden was in custody. The court of appeals held that inadmissibility was proper because, while the attacks may have been similar (apartment complexes), the descriptions of the attacker were not.

(cont. on pg. 11)☞

Phone Call to Juror

After questioning a juror regarding a telephone call received before jury deliberations began, the trial court found no reason for a mistrial. The juror described the call as "nothing." Walden did not establish prejudice and no error was found.

Jury Instructions

•Defining Reasonable Doubt.

Walden wanted an instruction stating that a "high probability of guilt" was not enough to prove guilt beyond a reasonable doubt in addition to the "mere probability of guilt" language already in the reasonable doubt instruction. The court found the instruction adequate. No error.

•Limiting Instruction.

At trial Walden had objected to a particular question on relevancy grounds and was overruled. Later he wanted a limiting instruction regarding the issue. The court held that once relevance was established by the trial court overruling Walden's objection, the evidence was entered for all purposes not a limited purpose.

•Instruction Explaining Expert's Limitation.

Walden wanted an instruction regarding why his eye-witness expert could not give an opinion regarding reliability of eye-witness testimony. The court simply stated that instructions on why evidence is excluded in neither wise nor desirable.

•Expert Opinion Instruction.

Walden focused on the last sentence of the Expert Opinion Instruction and argued that it required the jury to accept the expert opinion unless it was an unreasonable one. The court held that only when an instruction taken as a whole is such that it is reasonable to suppose a jury would be misled that a case should be reversed for error. This was not the case here.

•Instructions on Walden's Guilt.

Walden essentially wanted a separate instruction requiring the state to prove identity beyond a reasonable doubt. The court felt the issue was adequately covered by guilt beyond a reasonable doubt because the state had to prove each element beyond a reasonable doubt (including that the man charged did the act).

•Substance of Prior Inconsistent Statements.

Walden wanted inconsistent statements of two of the state's witnesses to be considered by the jury not just for impeachment purposes but substantively as well. The court held that the trial court should not unduly emphasize any part of the evidence to the exclusion of the rest. The trial judge's instruction to determine the facts and assess the credibility of the witnesses was adequate.

•Felony Murder Instruction.

Walden's argument was found to be meritless and the objection not made at trial thus waived.

Sentencing Issues

•13-703(F)(1): Prior Convictions for which sentence of life was imposable

May *Hannah* priors be used to satisfy 703(F)(1)?

Walden argued that conviction occurs at judgment (i.e., sentencing) and therefore Counts I and II, those used to establish aggravating circumstances under 703(F)(1), were not prior convictions. The state argued that for 703(F)(1) purposes, a conviction is a determination of guilt. The court agreed and makes several references to various parts of Rule 26, Ariz. Rules Crim. Proc., to support its conclusion.

Did Walden commit an offense for which life imprisonment was imposable?

Walden attempted to argue that Counts I and II were life sentences only when enhancements such as commission while on probation were included. The court flatly rejected the argument citing *State v. Spencer*.

•13-703(F)(2): Prior Convictions involving use/threat of violence

Did Walden's priors involve use/threat of force?

State v. Richmond established that it is the statutory definition of a crime and not the specific factual basis that determines whether the prior satisfies 703(F)(2).

•1990 Aggravated Assault.

Walden's 1990 conviction under 13-1203(A)(2) did not satisfy 703(F)(2) as it was possible to commit an assault under 1203(A)(2) without use/threat of violence. The state tried to incorrectly prove violence by the facts of the case and not the nature of the statute. The court continued on to evaluate each of Walden's priors to see if they met 703(F)(2) criteria; they did.

•13-703(F)(6): Cruel Heinous and Depraved Cruelty.

The court examined the facts of the victim's death and found sufficient evidence to establish cruelty.

The court upheld the trial court's finding that the murder was heinous and depraved based on its senselessness, the helplessness of the victim, its gratuitous violence, and its purpose of witness elimination.

•13-703(G): Mitigation

Walden argued that the trial court failed to consider mitigating evidence presented at sentencing. Nothing in the record suggested such ignorance. The court went on, however, to independently examine the mitigating evidence to determine if the death penalty was appropriate. The death penalty was upheld as appropriate.

The remaining issues were minor and resulted in swift denials.

(cont. on pg. 12)☞

State v. Herrera, 201 Ariz. Adv. Rep. 35
Trial Judge H. Jeffrey Coker
Relief Denied

This case was on review from a denial of PCR. The predominant issue was whether the trial court had jurisdiction to hear a PCR claim based on ineffective assistance of appellate counsel. The trial court held that it did not have jurisdiction. The appeals court reversed the denial of jurisdiction but upheld the denial of relief.

When examining the issue, the court narrowed its focus to whether a constitutional violation in the conviction or sentencing proceedings (the standard in determining if the defendant is entitled to relief) encompasses deficient representation on appeal. Although the majority of other jurisdictions reach the conclusion that ineffective assistance of appellate counsel claims must be presented to the appellate court, the Arizona Court of Appeals joined the "significant minority" and held that an allegation of ineffective assistance of appellate counsel is encompassed within Rule 32.1 as a claim that "a defendant's conviction . . . or sentence was in violation of the Constitution of the United States or State of Arizona."

The court went on to hold that the trial court's assessment of appellate counsel's performance would not usurp the appeals court's function because ineffective assistance of counsel (IAC) claims are generally not claims of errors relating to appellate proceedings . . . but rather are errors relating to the validity of the original judgment. Furthermore, the court found the trial court better equipped to resolve factual disputes that frequently underlie IAC claims.

When it reviewed the actual IAC claim, that counsel did not raise all the possible appealable issues, the court, in applying the *Strickland* two-prong test (whether counsel's conduct was below the prevailing professional standards and, but for that conduct, whether the outcome would have been different) found no basis for defendant's claim stating, "the process of winnowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of ineffective counsel, is the hallmark of effective appellate advocacy. [Citing *Smith v. Murray*.]"

State v. Gallow, 201 Ariz. Adv. Rep. 44
Trial Judge Deborah Bernini (*Pro Tempore*)
Reversed In Part

Gallow argued in his appeal from a conviction under ARS 28-692(A)(1) (hereinafter (A)(1)) and ARS 28-692(A)(2) (hereinafter (A)(2)) that his Motion for Directed Verdict under Rule 20, Ariz. Rules Crim. Proc., made after the state rested and renewed after the close of evidence, should have been granted when the state failed to disprove beyond a reasonable doubt Gallow's affirmative defense that his BAC was not >.10 within two hours of driving.

ARS 28-692(B) provides that it is an affirmative defense to an (A)(2) charge if the defendant did not have >.10 BAC at the time of driving. Furthermore, if the defendant has some credible evidence that the BAC was not >.10 at the time of driving, the state must prove beyond a reasonable doubt the BAC was >.10 at the time of driving.

Gallow was able to elicit testimony on cross-examination of the state's criminalist that his BAC could have been as low as .05 when he was stopped. The court found the criminalist's testimony to be "some credible evidence" and the burden of proof thereby shifted to the state. The state failed to meet its burden requiring proof beyond a reasonable doubt of a BAC >.10 at the time of driving. Therefore, the court reversed the (A)(2) conviction. It upheld, however, the (A)(1) conviction of driving while impaired to the slightest degree.

State v. Stine, 201 Ariz. Adv. Rep. 48
Trial Judge Ronald S. Reinstein
Relief Denied

This is another case where review of a denial of PCR was granted but relief denied.

Defendant was sentenced as a repeat offender under ARS 13-604(B) which disallowed eligibility for early release or consideration for commutation of sentence until at least 2/3 of the sentence was served. Shortly after defendant's sentencing, 604(B) was amended. Although the new 604(B) would not allow defendant to be considered for early release until all of her sentence was served, it did allow for consideration for commutation of sentence from the date of sentencing. Additionally, the section provided for a Board of Executive Clemency to replace the Board of Pardons and Paroles. The clemency board was authorized to hear cases of persons who committed felonies before the effective date of the new 604(B) [but who had yet to be sentenced].

Defendant argued that she was entitled to relief under this amended section as a person who committed a felony prior to the section's effective date. The court found that absent express language, Arizona statutes are not retroactive. Not only did the amended section not expressly provide for retroactive application, it expressly limited application to those offenses committed after the amendment's effective date.

Editor's Note: A special thanks to Deputy Public Defender Christine Israel for preparing this month's Advance Reports. Ω

November Trials

October 23

Curtis Beckman/Jeremy Mussman: Client charged with attempted murder, second degree. Investigator D. Erb. Trial before Judge Rogers ended November 3 with a hung jury. Prosecutor Shutts.

October 25

Larry Grant/Barbara Spencer: Client charged with first degree murder and felony murder. Trial before Judge Gerst ended November 2 with a judgment of acquittal on felony murder charge and a hung jury on first degree murder charge (8 to 4 for acquittal). Prosecutor Levy.

October 26

Bob Billar: Client charged with possession of methamphetamines and misconduct with weapons. Trial before Judge Seidel ended October 27. Defendant found guilty. Prosecutor Armijo.

October 30

Dan Carrion/Nancy Hines: Client charged with aggravated DUI. Investigator D. Erb. Trial before Judge Dunevant ended November 1. Defendant found guilty. Prosecutor Ainley.

Tom Timmer: Client charged with sexual conduct with a minor. Investigator R. Gissel. Trial before Judge Sargeant ended November 6 with a hung jury. Prosecutor Howe.

October 31

Peter Claussen: Client charged with one count of forgery (with four priors). Investigator H. Jackson. Trial before Judge Jarrett ended November 2. Defendant found guilty. Prosecutor Jorgenson.

Tom Kibler: Client charged with aggravated assault (dangerous). Investigator D. Erb. Trial before Judge Sheldon ended November 3. Defendant found guilty. Prosecutor Roberts.

November 1

Kristen Curry: Client charged with two counts of aggravated DUI. Trial before Judge Hertzberg ended November 6. Defendant found guilty. Prosecutor Rhigi.

November 6

Joe Stazzone: Client charged with negligent homicide with vehicle (dangerous). Trial before Judge Bolton ended November 29 with a hung jury (7 to 1 for acquittal). Prosecutor Ainley.

Leonard Whitfield: Client charged with manslaughter. Investigator G. Beatty. Trial before Judge Ishikawa ended November 28. Defendant found guilty. Prosecutor Gann.

November 7

Larry Grant: Client charged with aggravated assault. Trial before Judge Seidel ended November 10. Defendant found guilty. Prosecutor Collins.

Chris Trautman/Tim Ryan: Client charged with misconduct with a weapon and disorderly conduct. Trial before Judge Barker ended November 8. Defendant found guilty. Prosecutor Puchek.

November 8

Troy Landry: Client charged with DUI. Investigator R. Corbett. Trial before Pro Tem Judge Johnson (Maryvale Justice Court) ended November 8. Defendant found guilty. Prosecutor Kramer.

November 9

Kristen Curry/Rena Glitsos: Client charged with aggravated assault (dangerous). Investigator R. Gissel. Trial before Judge Jarrett ended November 20. Defendant found **not guilty.** Prosecutor Palmer.

Paul Klapper: Client charged with two counts of child molestation. Investigator R. Corbett. Trial before Judge Wilkinson ended November 16. Defendant found guilty. Prosecutor Sullivan.

November 14

Chris Trautman: Client charged with two counts of theft. Trial before Judge Rogers ended November 22. Defendant found guilty. Prosecutor Imbordino.

November 20

Tim Agan: Client charged with one count of aggravated assault and one count of kidnapping. Trial before Judge Wilkinson ended November 21. Defendant found guilty. Prosecutor Kane.

(cont. on pg. 14)☞

Bob Billar: Client charged with felony flight. Trial before Judge Dunevant ended November 23. Defendant found guilty. Prosecutor Lawrence.

Katie Carty/Vernon Lorenz: Client charged with two counts of sexual abuse and one count of criminal trespass. Investigator V. Dew. Trial before Judge Scott ended November 27. Defendant found **not guilty** of two counts of sexual abuse and guilty of criminal trespass. Prosecutor Cook.

November 22

Marie Farney: Client charged with aggravated assault. Investigator Greth. Trial before Judge Brown ended November 29. Defendant found **not guilty** of aggravated assault and guilty of disorderly conduct. Prosecutor Bernstein.

November 27

Peter Claussen: Client charged with aggravated DUI and aggravated driving with blood alcohol of .10 or greater. Trial before Judge Seidel ended November 29. Defendant found guilty. Prosecutor Righi.

Ray Schumacher: Client charged with aggravated assault. Trial before Judge Araneta ended November 27. Charges were dismissed without prejudice. Prosecutor Smyer.

November 28

Gary Bevilacqua/Marci Hoff: Client charged with sale of narcotic drugs. Investigator H. Jackson. Trial before Judge Rogers ended November 30. Defendant found **not guilty**. Prosecutor Meyers.

Jim Likos: Client charged with possession of narcotic drugs (with two priors and while on probation). Trial before Judge Hertzberg ended November 30. Defendant found guilty. Prosecutor Wendell.

November 29

Larry Grant: Client charged with aggravated assault. Trial before Judge Jarrett ended November 30. Defendant found **not guilty**. Prosecutor Lawrence. Ω

Bulletin Board

New Support Staff:

Geraldine Knight will join our Appeals Division as a legal secretary on January 2. Ms. Knight has worked as a legal secretary for the RTC in Tustin, California for the past three years.

Letters

Editor's Note:

December 15, 1995 was the first anniversary of former Deputy Public Defender William Helme's death. In honor of his memory, a commemorative ceremony was held in our Training Facility on November 17. Many of Bill's friends and associates, along with Bill's parents and daughter, attended.

Dan Raynak, Bill's former college roommate and co-worker, spearheaded the program. Maricopa County Public Defender Dean Trebesch and Juvenile Division Director Helene Abrams also spoke at the ceremony where an etched crystal pillar was given to Bill's parents and an inscribed plaque (designed for permanent display at the Juvenile Center) was presented.

The following letter from Bill's parents was received after the ceremony.

22 November 95

Dean Trebesch
Public Defender

Dear Dean:

The commemorative ceremony for our son on November 17 was beautiful and it will always be a memorable day in our lives.

We shall treasure the remarks made by Dan and yourself about Bill; a comment like "He was my hero" stays with one. Perhaps Helene's, though brief, were the most eloquent of all.

The little things said to us by all his lawyer friends have great importance to us and Jennifer. I believe she will also treasure them.

The ceremony and the mementos were proof for all of us that Bill was real and funny and great and that he is missed. Thank you.

Sincerely,

Ginny and William Helme

Computer Corner

This column is designed to provide simple computer tips helpful to people in the legal field. These tips are fashioned for WordPerfect 5.1 in DOS. If you have any problems, questions or suggestions that you would like to share, please contact Ellen Hudak in Trial Group B (506-8331).

Page Numbering Format:

To get your computer to accept a new page number like 111a, and then retain the original page numbering format on the next page follow these procedures: At the top of the new page: Press **Format** (Shift-F8), (2) Page, (6) Page Numbering, (1) New Page Number. Type 111 and press (Enter). Now press (2) Page Number Style, (Ctrl-B), then type *a*. Next press (Enter), then **Exit** (F7).

At the top of the page where you want to return to standard page numbering, i.e., page number 112, change the page number style back to ∧B. To do this, press **Format** (Shift-F8), (2) Page, (6) Page Numbering, (1) New Page Number. Some computers will automatically default back to the next page number. If not, type 112 and press (Enter). Now press (2) Page Number Style, (Ctrl-B). Next press (Enter), then **Exit** (F7). Generate your document and the page numbers will use this style in the index, table of contents, page numbering, etc. If your computer defaults to the ∧B page number style you can press (2) Page Number Style and add or delete the a as needed.

Tips for Deleting Text:

KEYSTROKE(S)	ACTION
(Ctrl-End)	Deletes text from the cursor to the end of the line.
(Ctrl-PgDn)	Deletes text from the cursor to the end of the page. Answer (Y) Yes to the prompt **Delete Remainder of page? No (Yes)**
(Ctrl-Backspace) or (Ctrl-Delete)	Deletes entire word, including the space that follows. The cursor can be anywhere in the word.
(Home), (Backspace)	Deletes from the cursor to the beginning of * the word. (* to delete a portion of a word "north" from the word "northwest" place your cursor on the "w" in "west" and press (Home), (Backspace).
(Home), (Del)	Deletes from the cursor to the end of the word, including the space that follows.

Viewing More Document

To view a few lines of text beneath your cursor: When the cursor reaches the bottom of the screen while you are typing or editing, you can move it up by pressing **Reveal Codes (Alt-F3)** twice. Press **Reveal Codes (Alt-F3)** once to turn on the feature and move your text higher on the screen (depending on your Reveal Codes windows size). Pressing **Reveal Codes (Alt-F3)** a second time turns the feature off, allowing you to see the text both above and below the cursor location.

Brainteaser for December.
(Answer in January's issue of "for The Defense.")

JUST FOR FUN

|R|E|A|D|I|N|G|

Happy New Year! Happy New Year! Happy New Year! Happy New Year! Happy New Year! Happy New Year! Happy New Year! Happy

Maricopa County Public Defender
Training Schedule

Date	Time	Title	Location
01/25/96	2:00 - 4:00 p.m.	Attorney and Support Staff Training: ***Personal Safety*** with Captain Jay Swart, Capitol Police	MCPD Training Facility
02/23/96	tentative times: 8:30 - 4:30	Attorney Training: ***MCPD's Going the Extra Mile--*** ***DUI 1996*** with Gary Trichter	Crowne Plaza-- Central Avenue & Adams
1996	LOOK FOR:	1) Telephone Talk, 2) Ethics, and more	